

April 19, 2024

Ralph A. Dengler

T: 212.503.0655  
 F: 212.307.5598  
 E: radengler@venable.com

**By ECF & Email to Failla NYSDChambers@nysd.uscourts.gov**

Honorable Katherine Polk Failla  
 United States District Judge  
 United States District Court for the Southern District of New York  
 40 Foley Square, Room 2103  
 New York, New York 10007

**MEMO ENDORSED**

Re: *Railware, Inc. v. National Railroad Passenger Corporation dba Amtrak*, 1:22-cv-05013 (KPF)  
Amtrak's Letter Motion to File Certain Documents Under Seal

Dear Judge Failla,

We represent Amtrak in the above-referenced litigation. Pursuant to Your Honor's Individual Practice Rule 9(B), we respectfully request leave to file under seal the below information designated under the Protective Order (ECF No. 108):

1. **Amtrak's Opposition to Railware's Motion to Dismiss Amtrak's Second and Third Counterclaims, and to Strike Amtrak's Second, Third, Fourth, Seventh, Tenth, and Eleventh Affirmative Defenses:** certain highlighted portions contain Railware's discovery designated as Highly Confidential - Attorneys' Eyes Only and Amtrak discovery designated Confidential from Exhibits A-C below.
2. **Exhibit A:** Amtrak discovery designated Confidential.
3. **Exhibit B:** Amtrak discovery designated Confidential.
4. **Exhibit C:** Amtrak discovery designated Confidential.

The parties met and conferred on April 18, 2024 to discuss this sealing request, and Railware does not oppose this application.<sup>1</sup>

It is well-settled that any redaction or sealing of a court filing must be narrowly tailored to serve whatever purpose justifies the redaction or sealing and must be otherwise consistent with the presumption in favor of public access to judicial documents. *See, e.g., Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). The preservation of sensitive business information has been found to warrant sealing. *Averbach v. Cairo Amman Bank*, No. 19-CV-0004-GHW-KHP, 2023 WL 4144758, at \*2 (S.D.N.Y. June 23, 2023); *see also Louis Vuitton Malletier S.A. v. Sunny Merchandise Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015). A sealing request is “narrowly tailored” when it seeks to seal only that information that must be sealed to preserve

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<sup>1</sup> Amtrak and Railware are not waiving their rights to challenge the respective confidentiality designations.



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higher values. *Susquehanna Int'l Grp. Ltd. v. Hibernia Express (Ir.) Ltd.*, No. 21 Civ. 207 (PGG), 2021 WL 3540221, at \*4 (S.D.N.Y. Aug. 11, 2021).

Amtrak's Opposition references sealed filings Railware has designated as Highly Confidential – Attorneys' Eyes Only and references Amtrak Confidential information designated under the Protective Order (ECF No. 108). *See* No. 1 above. Amtrak also seeks to seal exhibits with such Amtrak Confidential information. *See* Nos. 2-4 above. Thus, Amtrak has narrowly tailored its redactions.

Accordingly, Amtrak respectfully requests that the Court grant its request to seal the highlighted portions of Amtrak's Opposition (No. 1 above) and Exhibits A-C (Nos. 2-4 above) in their entirety.

Respectfully Submitted,

/s/Ralph A. Dengler

Ralph A. Dengler

*Counsel for Amtrak*

Application GRANTED. The Clerk of Court is directed to maintain docket entries 114 and 115 under seal, viewable to the Court and the parties only.

The Clerk of Court is further directed to terminate the pending motion at docket entry 111.

Dated: April 22, 2024  
New York, New York

SO ORDERED.

A handwritten signature in blue ink that reads "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE